BAIL SLIP

The accused namely Murugesan was directed to release on bail as per order of the Court dated 26.7.01 in Crl.M.P.4573/01 in C.A.626/01.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2007

CORAM

THE HONOURABLE MR. JUSTICE K.N.BASHA

Criminal Appeal Nos.617 & 626 of 2001

G.Ashok Kumar ... Appellant in Crl.A.No.617/2001 /Accused 1

Murugesan ... Appellant in Crl.A.No.626/2001 /Accused 2

Vs.

State rep. by
Inspector of Police,
D V & AC,
Chennai City Special Unit III,
Chennai. ... Respondent/Complainant

* * *

Prayer : Criminal appeals filed under Section 374 Cr.P.C. against the conviction and sentence imposed by the judgment dated 12.07.2001 passed in C.C.No.14 of 1998 on the file of the Court of the VII Additional Sessions Judge, Chennai.

* * *

For Appellant in Crl.A. No.617 of 2001 : Mr.R.Karthikeyan

For Appellant in Crl.A. No.626 of 2001 : Mr.S.Ashok Kumar, SC for V.Illanchezian

For Respondent in both the cases : Mr.J.C.Durairaj Government Advocate (Crl.Side)

J U D G M E N T

A-1 and A-2 are the appellants in Crl.A.Nos.617 and 626 of 2001 respectively and they have come forward with these appeals challenging their conviction and sentence passed by the learned VII Additional Judge, Chennai, made in C.C.No.14 of 1998 by the judgment dated 12.7.2001 convicting the appellants for the offence under Section 7 of the Prevention of Corruption Act (hereinafter referred to "the Act") read with Section 34 I.P.C. and sentencing them to one year rigorous imprisonment each and also with a fine of Rs.1,000/- carrying default sentence of three months rigorous imprisonment and also convicting both the accused for the offence under Section 13(1)

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(d) read with 13(2) of the Act and sentencing them to one year rigorous imprisonment imposing a fine of Rs.1,000/- carrying default sentence of three months rigorous imprisonment. The learned trail Judge ordered the sentences to run concurrently.

2. A-1 was working as Inspector of Police attached to K.K.Nagar police station and A-2 was working as police constable attached to the same police station. The charges against accused 1 and 2 is that by misusing their official position A-1 said to have demanded a sum of Rs.6,000/- from P.W.2 for the purpose of relieving her from a murder case and in pursuance of such demand on 01.12.1995 with an intention of obtaining illegal gratification, A-2 received a sum of Rs.6,000/- for A-1 and thereby they have committed the offence punishable under Section 7 of the Act read with Section 34 of I.P.C. and also under Sections 13 (2) read with 13(1)(d) of the Act read with Section 34 I.P.C.

3. The prosecution in order to bring home the charges against the accused examined P.Ws.1 to 10, filed Exs.P.1 to P.8 besides marking M.Os.1 to 7.

4. The accused 1 and 2 in this case faced trial under the following backdrop :

(i) P.W.2 is a resident of M.G.R.Nagar adjacent to Ashok Nagar, Chennai. In the year 1995, she was implicated in a murder case of one Ramanan. A-1 took P.W.2 to the police station and told her that he is going to implicate her in a murder case and instructed her to take colour photograph by accompanying with a constable by name Andiappan and thereafter A-1 instructed her to take her black and white photograph on 28.11.1995 at 7.00 p.m., the said constable by name Andiappan took P.W.2 again to the police station. P.W.2 met A-1 in the police station and at that time A-1 enquired about the business of P.W.2. A-1 demanded the bribe amount for the purpose of preventing the witnesses to depose against her. The police filed a case against P.W.2's son, while the same was questioned by P.W.2, she was also implicated in that case. Thereafter, she was arrested along with her son and as such the occurrence was taken place prior to 28.11.1995. A-1 for the purpose of closing all those cases demanded Rs.6,000/- from P.W.2 on 28.11.1995. Thereafter P.W.2 consulted her husband P.W.5 and decided not to give the bribe amount to A-1 and she decided to give a report to the police.

(ii) On 01.12.1995, P.W.2 appeared before P.W.9, the Deputy Superintendent of Police, in his office of Vigilance and Anti-Corruption and gave a report which was recorded by P.W.5 her husband and P.W.2 affixed her thump impression. P.W.5 has also signed the report, Ex.P.2. P.W.9 on receipt of Ex.P.2 registered the case in Crime No.10/AC/95 MC-2 for the offence under Section 7 of the Act. Ex.P.16 is the First Information Report.

(iii) P.W.9, thereafter, enquired about A-1 and made arrangements for a trap. He summoned P.W.3 and one Gunasekaran. P.W.3 was working as Personal Assistant to the Director of Education. P.W.3 with the permission of her superiors appeared before P.W.9, the Deputy Superintendent of Police, on the same day at 5.30 p.m. P.W.9 introduced P.W.3 and another witness one Gunasekaran to P.W.2 and

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also gave the report, Ex.P.2 and requested P.W.3 and another witness to read the same. Thereafter, he has explained about the complaint and also about the proposed trap. P.W.9, thereafter, demonstrated the phenolphthalein test to P.W.2, P.W.3 and others. P.W.9, smeared the phenolphthalein powder in the currency notes, M.O.5 series given by P.W.2 totalling to Rs.6,000/-, M.Os.5 and 6 series. He has instructed P.W.2 to go to the office of A-1 and to give the amount only in the event of A-1 demanding the same. P.W.9 has also instructed P.W.2 to give the pre-arranged signal by cleaning her spectacles with her saree. P.W.3 was requested to accompany with P.W.2 to watch the transaction between A-1 and P.W.2. Ex.P.4 mahazar was prepared in respect of the proceedings took place in the office of P.W.9 prior to the trap which was signed by P.W.2, P.W.3 and one Gunasekaran. Thereafter, the raiding party headed by P.W.9 left for K.K.Nagar police station at 7.55 p.m. P.W.9 asked P.Ws.2 and 3 to go inside the police station.

(iv) While P.W.2 entered inside the police station, A-1 enquired her and also asked her whether she has brought money which was demanded by him. P.W.2 stated that she has brought the money and took up the currency notes from her bag. A-1 asked her to wait and pressed the calling bell and at that time A-2 came there. A-1 instructed A-2 to receive the amount from P.W.2. As per the instructions of A-1, A-2 received the amount of Rs.6,000/- from P.W.2 and put the same in a bag. P.W.2 immediately came out of the police station and gave the pre-arranged signal. The raiding party immediately rushed to the police station and P.W.2 informed P.W.9 about the demand of money made by A-1 and thereafter handed over the amount to A-2.

(v) P.W.9 introduced himself to A-1. He enquired A-1 about the demand and receipt of the amount. A-1 has become perturbed and took the currency notes from his pant pocket and throw away through the window. Thereafter, P.W.9 enquired A-2 in respect of the amount given by P.W.2. A-2 has also said to have perturbed. Thereafter, P.W.9 conducted phenolphthalein test in respect of both A-1 and A-2 and only in respect of A-2, the phenolphthalein test proved positive. Thereafter, P.W.9 instructed A-2 to produce the amount and A-2 took out the bag lying near his seat and produced the amount from his hand bag, M.O.7. P.W.9 asked the witnesses to count the currency notes and found a sum of Rs.6,000/- and the currency note numbers were also compared with the currency note numbers already taken under mahazar, Ex.P.4. The currency notes were marked as M.Os.5 and 6 series. P.W.9 recovered the currency notes which were thrown out through the window by A-1 and also the bottle containing sodium carbonate solution under Ex.P.5. At 11.00 p.m., P.W.9 arrested both A-1 and A-2. Thereafter, he searched at the house of A-1 at 11.45 p.m. and no incriminating materials seized from the house of A-1. At 12.30 mid night A-2's house was searched and there also no incriminating materials recovered. He prepared the rough sketch, Ex.P.17. He examined P.W.2 and recorded her statement. On 02.12.1995 at 12.30 mid night under Ex.P.7, he has also recovered some documents from P.W.6 under Ex.P.7, mahazar. On 04.12.1995 he sent the material objects to the court under Ex.P.18. Thereafter, he sent the material objects to the court with a requisition, Ex.P.14 for chemical examination.

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(vi) P.W.10, Inspector of Police, Vigilance and Anti-Corruption took up further investigation on 05.12.1995. He examined P.Ws.2, 3 and other witnesses and recorded their statements. He received the chemical examination report, Ex.P.15 and after obtaining the sanction, Ex.P.1 he has filed the charge sheet against the accused 1 and 2 for the offence under Sections 7, 13(2) read with 13(1)(d) of the Act read with 34 I.P.C.

5. When the accused were questioned under Section 313 Cr.P.C. in respect of the incriminating materials appearing against each of them, both A-1 and A-2 have stated that they are false and contrary to the facts and they have further stated that they have been falsely implicated in the case. A-1 has also filed a written statement and in that statement, it is stated by A-1 that the complaint given by P.W.2 is a motivated one. It is further stated that on 01.12.1995 while he was verifying certain documents, P.W.2 came there with a cover stating that she has brought a petition. As A-1 was busy with other work he has instructed P.W.2 to hand over the said cover to A-2 and within five minutes, the raiding party came inside his room and he was shocked while P.W.9 enquired him. He has stated that he has not made any demand of bribe from P.W.2. The police had not accepted his version and foisted the false case against him. The defence has not chosen to examine any witness on their side but marked Exs.D.1 to D.5.

6. Mr.R.Karthikeyan, learned counsel appearing for the appellant (A-1) in Crl.A.No.617 of 2001 vehemently contended that the prosecution has miserably failed to prove its case against A-1 by adducing clear and cogent evidence. The learned counsel would contend that the prosecution has failed to prove the first and foremost ingredient of the alleged demand said to have been made by A-1. It is submitted that P.W.2 has come forward with contradictory version in respect of the reason for A-1 to demand the bribe amount as she has stated in her report, Ex.P.2 that A-1 demanded the bribe amount for the purpose of not implicating her in a murder case, whereas in her evidence P.W.2 stated that A-1 demanded the bribe amount of Rs.6,000/- on the ground of preventing the witnesses to depose against her in a case. It is contended that in view of the inconsistent version of P.W.2 regarding the reasons for the alleged demand, it is not safe to place reliance on her evidence to implicate A-1 on the allegation of alleged demand of bribe.

7. It is also submitted by the learned counsel for A-1 that once the defence probabilised its version to the effect that the prosecution has miserably failed to prove the alleged demand made on the part of A-1, then the question of implicating A-1 for the alleged offence under Section 7 of the Act or under Sections 13(1)(d) read with 13(2) of the Act does not arise. It is also vehemently contended by the learned counsel for the appellant/A-1 that on the basis of the materials available on record, it is very clear that A-1 is not the concerned investigating officer in the murder case as well as the other case and he has nothing to do with those cases and as such it is highly improbable for A-1 to demand any bribe from P.W.2 for the purpose of not taking action against her in respect of those cases and therefore, P.W.2 has come forward with the different version and her version of alleged demand made by A-1 is unbelievable and unacceptable. It is also contended by the learned counsel for A-

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1 that if at all A-1 made any demand, he himself could have received the amount and admittedly no money was recovered from A-1 and therefore, the prosecution has miserably failed to prove the offence alleged against A-1.

8. Mr.S.Ashok Kumar, learned senior counsel appearing for A-2 contended that as per the prosecution version the demand is said to have been made by A-1 and only at the instruction of A-1, the money was handed over to A-2 and A-2 has absolutely no knowledge about the demand of bribe amount and as such he cannot be implicated for the offence alleged against him. The learned senior counsel would further contend that P.W.2 has specifically admitted in her cross-examination that A-2 has not demanded the bribe amount and he has no knowledge about the purpose for which the amount was handed over to him and he has received the amount only at the instruction of his higher official. It is also pointed out by the learned senior counsel that P.W.3, the trap witness, has categorically stated in her cross-examination that A-1 instructed A-2 to receive the cover informing him that the cover contains a petition and only on the basis of such instruction A-2 received the said cover. The learned senior counsel would further contend that there is contradiction in material particulars as P.W.2 stated that she has handed over the currency notes to A-2 as per the instructions of A-1 and whereas P.W.3 has stated that A-2 only received the cover at the instruction of A-1 as A-1 stated to A-2 that the cover contains a petition and as such the prosecution has not come forward with a consistent version. It is submitted that though the amount is said to have been recovered from A-2, the admitted version of the prosecution is that A-2 never demanded any bribe amount and further he has received the said amount only as per the instruction of his superior/A-1 and as such in this case, the question of raising the presumption under Section 20 of the Act does not arise. It is further submitted that even assuming that in the event of the recovery of amount is from A-2, A-2 has rebutted the presumption by way of placing reliance on the admitted version of the prosecution that only at the instruction of A-1, A-2 received such amount and the admission of P.W.2 that A-2 has no knowledge about the demand or the purpose for which the amount was given and also further he has also rebutted the presumption by way of preponderance of probabilities. Therefore, it is submitted by the learned senior counsel that there is absolutely no evidence available on record to impute the knowledge of alleged demand of bribe amount made by A-1 and A-2 has simply acted as per the instruction of A-1, who is his superior and therefore, he cannot be held liable for the offences alleged against him.

9. Per contra, Mr.J.C.Durairaj, learned Government Advocate contended that the prosecution has proved its case by adducing clear and cogent evidence through P.Ws.2, 3 and 9. It is submitted that the prosecution has succeeded in proving the demand of bribe made by A-1 through P.W.2 and P.W.3 and on that aspect there is absolutely no contradiction. It is contended that though P.W.3 has been treated as hostile, as far as the demand of bribe amount made by A-1 is concerned, the version of P.W.3 is categorical as he has stated that soon after they entering into the room of A-1, A-1 questioned P.W.2 and P.W.2 stated that she has brought the money and thereafter, A-1 instructed P.W.2 to hand over the amount to A-2 who was called by A-1 by pressing the calling bell. Therefore, it is submitted that there

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is a consistent version in respect of the demand made by A-1 on the date of trap, i.e. on 01.12.1995. It is also submitted that even P.W.2 has categorically stated about the earlier demand of bribe made by A-1 on 28.11.1995. The learned Government Advocate (Crl. Side) would further contend that though it is contended by the learned counsel for A-1 that there are contradictory versions in respect of the purpose for which the demand of bribe amount was made by A-1 between Ex.P.1 report and the evidence of P.W.2, the materials available on record clearly shows that there is no contradiction at all. It is pointed out by the learned Government Advocate (Crl. Side) that in Ex.P.2 it was categorically stated by P.W.2 that A-1 demanded the bribe amount for the purpose of not implicating her in a murder case. It is also pointed out that even in Ex.P.2, P.W.2 has clearly mentioned about implicating her and her son in respect of other cases. The learned Government Advocate contended that even in her evidence, P.W.2 has categorically stated that A-1 threatened that he would implicate her in a murder case and thereafter filed a case against her as well as her son and as a result, she was arrested on 28.11.1995 and A-1 demanded Rs.6,000/- for the purpose of relieving her from all the cases and as such there is a clear mention about the murder case and the other cases and there is absolutely no contradiction between the evidence of P.W.2 and her report, Ex.P.2.

10. The learned Government Advocate (Crl. Side) would further submit that as far as A-2 is concerned, the prosecution has succeeded in recovering the amount said to have been handed over to A-2 by P.W.2 and though it is the prosecution case that A-2 received the said amount only at the instruction of A-1, it cannot be stated that A-2 has no knowledge about the demand made by A-1 at all in view of the recovery of the amount from him and as in view of the recovery of the amount, the prosecution has also succeeded in proving the case against A-2 and the defence theory of A-2 has no knowledge about the demand of bribe amount made by A-1 is not at all probabilised by the defence by placing reliance on the materials available on record. Therefore, it is submitted that the prosecution has succeeded in proving the case against A-1 and A-2 in all aspects.

11. I have carefully considered the rival contentions put forward by either side and also thoroughly scrutinised the entire materials available on record and also perused the impugned judgment of conviction.

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12. The prosecution in this case heavily placed reliance on the evidence of P.W.2/the complainant, P.W.3/the trap witness, and P.W.9, the Deputy Superintendent of Police who has received the report and thereafter, conducted the trap. A-1 was working as Inspector of Police and he was attached to the K.K.Nagar Police Station and A-2 was working under him as police constable. It is pertinent to note that even as per the admitted version of the prosecution that the demand of bribe was made only by A-1 from P.W.2 for the purpose of not implicating her in a murder case as well as relieving her in respect of other cases by preventing the witnesses from implicating her in their deposition. Though the learned counsel for A-1 took enormous pain to contend that the prosecution has miserably failed to prove the demand made by A-1, the fact remains that there are overwhelming materials available on record to establish the demand of bribe amount made by A-1. A perusal of the Ex.P.2 report given by

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P.W.2 discloses that there is a specific mention in the report, Ex.P.2 that A-1 demanded Rs.6,000/- from P.W.2 for the purpose of not implicating her in a murder case. It is also relevant to note that in the report, Ex.P.2 itself, P.W.2 has categorically mentioned about her implication in respect of other cases also and thereafter she was arrested along with her son. P.W.2 has also categorically stated the above said facts in her evidence and this Court is unable to see any inconsistency between Ex.P.2 and her evidence. It is seen that P.W.2 has categorically stated that even prior to 28.11.1995, A-1 has taken her to the police station and threatened her that he would implicate her in a murder case. It is also further stated by P.W.2 in her evidence that she was also implicated in another case along with her son and both of them have been arrested, and after all these incidents, it is further stated by P.W.2 that ultimately on 28.11.1995, A-1 demanded a sum of Rs.6,000/- in order to relieve her from all the above said cases. Therefore, the contention of the learned counsel for A-1 that there are contradictions between Ex.P.2 and the evidence of P.W.2 is not at all acceptable as P.W.2 has given the same reason in her evidence mentioning the other case foisted against her. It is seen, as already pointed out by this Court, that even in Ex.P.2, the report, given by P.W.2, apart from mentioning about implicating her in a murder case, P.W.2 also clearly stated about her implication in respect of other cases and also about her arrest along with her son. Therefore, this court is of the considered view that P.W.2 has come forward with a consistent version both in her report, Ex.P.2 as well as in her evidence before the Court.

13. This categorical version of P.W.2 is also corroborated by the trap witness, P.W.3. P.W.3 is a respectable witness and she was working as a Personal Assistant to the Director of Education. Though the prosecution has treated her as hostile witness mainly on the ground of her version to the effect that P.W.2 has handed over a cover to A-2 at the instruction of A-1, the fact remains as far as demand portion is concerned, P.W.3 has also categorically stated that on the date of trap, i.e. on 01.12.1995 while P.W.2 and herself entered inside the room of A-1, A-1 questioned P.W.2 about the amount and P.W.2 specifically stated that she has brought the amount and thereafter A-1 asked P.W.2 to wait and pressed the calling bell and at that time A-2 came there and A-1 instructed P.W.2 to hand over the amount to A-2. It is well settled that the evidence of a hostile witness cannot be rejected in toto and if there is any portion either in favour of the prosecution or in favour of the defence could be placed reliance by the Court. Therefore, this Court has no hesitation to hold that P.W.2 has not only come forward with the consistent version in respect of the demand of bribe amount made by A-1 but her version is also corroborated by P.W.3 both in respect of the alleged demand of illegal gratification made by A-1 and handing over the bribe amount to A-2 at the instruction of A-1. Therefore, this Court has no hesitation to hold that the prosecution has proved its case beyond reasonable doubt against A-1 in respect of the offence alleged against him and the learned trial Judge has rightly convicted A-1.

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14. Now, coming to the role played by A-2, it is pertinent to note that even the admitted version of the prosecution is that A-2 has never made any demand of bribe from P.W.2. It is also the

admitted version of the prosecution that only at the instruction of A-1, P.W.2 has handed over the amount of Rs.6,000/- to A-2. Even in respect of the handing over of the amount of Rs.6,000/-, there are contradictions between the evidence of P.W.2 and P.W.3. Though it is stated by P.W.2 that A-1 pressed the calling bell and thereafter A-2 came there and P.W.2 was instructed to hand over the amount and thereafter she has handed over the amount which was received by A-2, the version of P.W.3 is altogether different. P.W.3, on the other hand, stated that P.W.2 handed over a sum of Rs.6,000/- and A-1 asked to keep it with her and called A-2 and directed P.W.2 to hand over the amount to A-2. It is the further version of P.W.3 in the chief examination itself to the effect that if A-2 comes the money has to be handed over to him. In the cross P.W.3 stated that P.W.2 brought the money in a cover and she has no occasion to take the amount from the cover. It is the further version of P.W.3 in the cross that soonafter reaching the police station within a minute after A-1 instructed to hand over the amount and P.W.2 handed over the cover to A-2. The yet another version of P.W.3 as per her cross-examination is to the effect that P.W.2 only handed over the cover to A-2 as A-2 was called by A-1. It is pertinent to be noted that P.W.3 further stated in her cross-examination that P.W.2 informed A-2 that the cover contains a petition and as a result, A-2 received the cover. At this juncture, it is to be noted that P.W.2 categorically admitted in her cross-examination that she has totally unaware about the demand of bribe amount made by A-1 and on the other hand it is crystal clear from the evidence of P.Ws.2 and 3 that neither A-2 demanded any bribe amount nor A-2 had knowledge about the alleged demand of bribe amount by A-1. Therefore, this Court is of the considered view that merely because the amount was recovered from A-2, A-2 could not have been held liable for the charges levelled agasint him under the Act.

15. It is relevant to note that there is a statutory presumption contemplated under Section 20(1) of the Act which reads as follows :

> "(1) Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate."

The provision under Section 20(1) of the Act, 1988 is corresponding to the provision under Section 4(1) under the old Act, namely, the Prevention of Corruption Act, 1947. The presumption under Section 20 (1) is a rebuttable one.

16. The Hon'ble Supreme Court has held in Chaturdas Bhagwandas Patel V. State of Gujarat reported in AIR 1976 SC 1497 that,

> "... that the burden that rests on an accused to displace the statutory presumption that is raised under Section 4(1) of the Act, is not onerous as that cast on

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the prosecution to prove its case. But such burden has to be discharged, by brining on record evidence, either direct or circumstantial, to establish with reasonable probability."

17. In yet another decision in Punjabrao V. State of Maharashtra reported in 2004 SCC (Cri.) 1130, the Hon'ble Apex Court has held that,

"It is too well settled that in a case where the accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether the explanation can be said to have been established. It is further clear that the accused is not required to establish his defence by proving beyond reasonable doubt as the prosecution, but can establish the same by preponderance of probability."

18. The Hon'ble Apex Court in a latest decision in T.Subramanian V. State of T.N. has held as follows :

"Mere proof of receipt of money by accused, in absence of proof of demand and acceptance of money as illegal gratification, not sufficient to establish guilt of accused – If accused offers reasonable and probable explanation based on evidence that the money was accepted by him, other than as an illegal gratification, accused would be entitled to acquittal."

19. The principle of law laid down by the Hon'ble Apex Court in the above said catena of decisions squarely applicable to the facts of the instant case in respect of A-2. As already pointed out, there is not an iota of evidence to show that A-2 was having any knowledge about the alleged demand of bribe made by A-1 and even as per the admitted case of the prosecution A-2 has never demanded any bribe amount and as such A-2 rebutted the presumption contemplated under Section 20 of the Act by placing reliance on the admitted version of the prosecution as well as the answers elicited from P.Ws.2 and 3 and coupled with the preponderance of probabilities.

20. As far as A-2 is concerned, it is also relevant to refer the decision of the Hon'ble Apex Court in a similar and identical case in K.Subba Reddy V. State of Andhra Pradesh reported in 2007 (4) Crimes 102 (SC). For the better understanding it is better to refer the following paragraphs highlighting the facts as well as the findings of the Hon'ble Apex Court which reads as hereunder :

"4. ... Before the trial Court the prosecution referred to the evidence of P.W.1 who claimed that as per the instructions of A-1 money was handed over to A-2. A-1 denied the demand and acceptance of the bribe and pleaded that P.W.1 paid the amount to A-2 to hand over the same to one person namely, Subbarayudu for the purpose of remitting the same to the treasury. The trial Court held that the tainted money was delivered to A-2 and it was recovered from A-2. Accordingly, both A-1 and A-2 were guilty. The High Court by the impugned order upheld the conviction of the two accused persons.

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5. In support of the appeal, learned counsel for the appellant submitted that no definite role was ascribed to the present appellant and no material has been adduced to show that A-2 had any knowledge that the money was being paid to A-1 as bribe. There is not even any suggestion, much less, no evidence to show that A-2 had any knowledge that he was being used as a conduit for the purpose of payment of bribe to A-1. It is, therefore, submitted that the conviction is not maintainable.

6. Learned Counsel for the State on the other hand submitted that the connected SLP (Crl.) No.2113/2006 filed by A-1 has been dismissed. Though there is no direct evidence about the knowledge of A-2 the present appellant about the money being bribe to A-1, it can reasonably be inferred from the background facts that he was actually a conduit and the money was paid to him and he was asked to hand over the same to A-1. On the contrary, the totally unaccepted plea that money was to be paid to somebody else has been raised which has been rightly rejected by the trial Court and the High Court. The evidence of P.W.1 is of vital importance.

7. There is no material to show about the knowledge of A-2 regarding the money being bribe. He had offered the explanation that the money was to be paid to Subbarayudu. In this connection, reference is made to the evidence of P.W.1. He has only stated that A-1 asked him to hand over the money to A-2 if he had gone out for checking of shops."

By giving the above said reasons, the Hon'ble Apex Court has acquitted A-2, the appellant in that case, holding that there is no sufficient material to implicate A-2. The above principle of law laid down by the Hon'ble Apex Court in a identical case is squarely applicable to the facts of the instance case relating to A-2.

21. For the aforesaid reasons, the inevitable conclusion of this Court is the conviction and sentence imposed on A-2 by the learned VII Additional Sessions Judge, Chennai, in C.C.No.14 of 1998 dated 12.07.2001, is unsustainable in law and accordingly, the appeal filed by A-2 in Crl.A.No.626 of 2001 is allowed and the conviction and sentence imposed on A-2 are set aside. Bail bond executed, if any, shall stand cancelled. Fine amount paid, if any, is directed to be refunded to the appellant.

As far as A-1 is concerned, in view of the above said findings, this Court is constrained to dismiss the appeal filed by him and accordingly, the appeal filed by A-1 is Crl.A.No.617 of 2001 is hereby dismissed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The VII Additional Sessions Judge, Chennai.

2. The Inspector of Police, D V & AC,
   Chennai City Special Unit III, Chennai.

3. The Public Prosecutor, Madras High Court, Chennai.

4. The Director General of Police, Chennai -4

+ 1 CC to Mr.V.Illanchezian, Advocate, S.R.No.72206

+ 1 CC To Mr.R.Rakrthikeyan, Advocate SR NO.71942

Criminal Appeal Nos.617 & 626 of 2001

NSM(CO)
SRA (20/05/2008)

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